

Appl. No. 10/042,822
Amdt. dated January 8, 2002
Reply to Office Action of March 26, 2004

REMARKS/ARGUMENTS

Claims 36 - 37 and 40 - 48 are pending in this application.

Claim 36 has been amended, with support for the amendment appearing in the specification, particularly page 9, line 24 to line 30, page 24, line 17 to page 29, line 17, and canceled Claim 7.

Reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

A. Double Patenting

Claims 36, 40 - 43, and 45 - 47 stand rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1 - 3, 5, 8, and 11 - 13 of U.S. Patent No. 5,990,377 issued to F. J. Chen et al. on November 23, 1999. It is Applicants' intention to submit a terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) for the present application in the event the present application is likely to issue and the rejection is maintained.

B. Objection To The Specification

The Examiner reminded the Applicants of the proper format for an abstract of the disclosure. Applicants believe that the objection to the Abstract has been remedied by the foregoing amendment to the Abstract. Applicants believe the objection should be withdrawn.

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C. Rejection Of Claims 36-37; 40-42; 44-45 and 47 Under 35 U.S.C. § 102(e)

Claims 36 - 37, 40 - 42, 44 - 45, and 47 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Patent No. 5,763,044 issued to Ahr et al. on June 9, 1998 (hereinafter referred to as the "Ahr et al. reference"). Claim 36 has been amended to more particularly point out specific features of the present invention. Applicants respectfully traverse the rejection with respect to Claim 36 as amended.

Regarding Claim 36, the Examiner states that the Ahr et al. reference "discloses a method for producing an absorbent web having a dry feel when wet (Abstract) comprising the steps of: preparing an inherently hydrophilic basesheet comprising papermaking fibers (col. 6, lines 40-45) and having an upper surface and a lower surface, the upper surface having elevated and depressed regions (Figure 7); and depositing hydrophobic matter (col. 5, lines 63-65) preferentially on the elevated regions of the upper surface of the base sheet (Figure 7)."

Applicants submit that for a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. The Ahr et al. reference does not disclose each and every element or limitation of the currently amended Claim 36. The Ahr et al. reference does not teach Wet Compressed Bulk of a basesheet, and more specifically Wet Compressed Bulk of about 0.5 cc/g or greater. Accordingly, independent Claim 36 and dependent Claims 37, 40 - 42, 44 - 45, and 47 are believed to be novel and nonobvious over the Ahr et al. reference.

Based on the foregoing amendments and remarks, Applicants respectfully submit that independent Claim 36 and dependent Claims 37, 40 - 42, 44 - 45, and 47 are not anticipated by the Ahr et al. reference. Thus, Applicants respectfully request withdrawal of this rejection.

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D. Rejection Of Claims 43, 46, 48 Under 35 U.S.C. § 103

Claims 43, 46, and 48 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Ahr et al. reference. Applicants respectfully traverse the rejection.

Regarding Claims 43 and 46, the Examiner states that the Ahr et al. reference "does not disclose the exact amount of hydrophobic matter attached to the upper surface or the Rewet value. It is evident that Ahr has a value for this characteristic. Ahr recognizes that the choice of fibril length and fibril density (amount attached to the surface) can be varied and this will affect the rewet characteristics (col. 5, lines 59-60). Ahr, therefore recognizes the Rewet value is a result effective variable of fibril length and density. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr with the claimed amount of synthetic fibers attached to the upper surface and the claimed Rewet value, since discovering an optimum value of a result effective variable involves only routine skill in the art."

Regarding Claim 48, the Examiner states that the Ahr et al. reference "discloses the basis weight of the base sheet is .058-14.6g/m² (col. 10, lines 31-32), which is included in the range of from about 10-70 gsm. Ahr is silent on the basis weight of the hydrophobic matter, it is evident that Ahr has a value for this characteristic. Ahr recognizes that the choice of fibril length and fibril density, which is affected by the fibril basis weight, can be varied and this will affect the rewet characteristics (col. 5, lines 59-60). Ahr, therefore recognizes the function of the topsheet in terms of rewet, acquisition, and tactile feel is a result effective variable of fibril length and density. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr with the claimed basis weight of the hydrophobic matter since discovering an optimum value of a result effective variable involves only routine skill in the art."

Applicants submit that the Ahr et al. reference does not establish a prima facie case of obviousness. To establish a prima facie case of obviousness, the reference must disclose or suggest all the claim limitations. Ecolchem Inc. v. Southern California Edison Co., 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000): We have previously held that "[t]he suggestion to combine may be found in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved." WMS Gaming, Inc. v. International Game Tech., 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999).

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However, there still must be evidence that "a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d at 1357, 47 USPQ2d at 1456; see also *In re Werner Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification...of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.").

The Ahr et al. reference does not teach or suggest the Wet Compressed Bulk of a basesheet, and more specifically Wet Compressed Bulk of a basesheet of about 0.5 cc/g or greater. Applicants submit that the Ahr reference does not provide or result in the recited benefits of the present invention. Accordingly, independent Claim 36 and dependent Claims 43, 46, and 48 are believed to be novel and nonobvious over the Ahr et al. reference.

Based on the foregoing amendments and remarks, Applicants respectfully submit that independent Claim 36 and dependent Claims 43, 46, and 48 are patentable over the Ahr et al. reference. Thus, Applicants respectfully request withdrawal of this rejection.

E. Conclusion

The application now contains Claims 36 - 37 and 40 - 48 which are believed to be in condition for allowance. Applicants would like to thank the Examiner for the careful attention paid to the present application. Early allowance of the claims in view of the above remarks is earnestly requested.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMITTAL

I, Judy Garot, hereby certify that on July 23, 2004 this document is being transmitted via facsimile no. (703) 872-9306 to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 

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